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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Nov 01, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Case No.: 1:22-CR-2079-SAB-1

Plaintiff,

Plea Agreement

V.

JAMES SKAHAN-LOWE,

Defendant.

Plaintiff United States of America, by and through Vanessa R. Waldref, United States Attorney the Eastern District of Washington, and Thomas J. Hanlon, Assistant United States Attorney for the Eastern District of Washington, and Defendant James Skahan-Lowe (“Defendant”), both individually and by and through Defendant’s counsel, Deputy Federal Defender Alex B. Hernandez, III., agree to the following Plea Agreement.

1. Guilty Plea and Maximum Statutory Penalties

Defendant agrees to enter a plea of guilty to Count 2 of the Indictment filed on July 12, 2022, which charges Defendant with Brandishing of a Firearm During and in Relation to a Crime of Violence, in violation of 18 U.S.C. § 924(c)(1)(A)(ii).

Defendant understands that the following potential penalties apply:

- 1 a. a term of imprisonment of not less than 7 years and up to a
2 lifetime;
- 3 b. a term of supervised release of not more than 5 years;
- 4 c. a fine of up to \$250,000;
- 5 d. restitution; and
- 6 e. a \$100 special penalty assessment.

7 2. Supervised Release

8 Defendant understands that if Defendant violates any condition of
9 Defendant's supervised release, the Court may revoke Defendant's term of
10 supervised release, and require Defendant to serve in prison all or part of the term
11 of supervised release authorized by statute for the offense that resulted in such term
12 of supervised release without credit for time previously served on postrelease
13 supervision, up to the following terms:

- 14 a. 5 years in prison if the offense that resulted in the term of
15 Supervised Release is a class A felony,
- 16 b. 3 years in prison if the offense that resulted in the term of
17 Supervised Release is a class B felony, and/or
- 18 c. 2 years in prison if the offense that resulted in the term of
19 Supervised Release is a class C felony.

20 Accordingly, Defendant understands that if Defendant commits one or more
21 violations of supervised release, Defendant could serve a total term of
22 incarceration greater than the maximum sentence authorized by statute for
23 Defendant's offense or offenses of conviction.

24 3. The Court is Not a Party to this Plea Agreement

25 The Court is not a party to this Plea Agreement and may accept or reject it.
26 Defendant acknowledges that no promises of any type have been made to
27 Defendant with respect to the sentence the Court will impose in this matter.

28 Defendant understands the following:

- 1 a. sentencing is a matter solely within the discretion of the Court;
- 2 b. the Court is under no obligation to accept any recommendations
- 3 made by the United States or Defendant;
- 4 c. the Court will obtain an independent report and sentencing
- 5 recommendation from the United States Probation Office;
- 6 d. the Court may exercise its discretion to impose any sentence it
- 7 deems appropriate, up to the statutory maximum penalties;
- 8 e. the Court is required to consider the applicable range set forth
- 9 in the United States Sentencing Guidelines, but may depart
- 10 upward or downward under certain circumstances; and
- 11 f. the Court may reject recommendations made by the United
- 12 States or Defendant, and that will not be a basis for Defendant
- 13 to withdraw from this Plea Agreement or Defendant's guilty
- 14 plea.

15 4. Potential Immigration Consequences of Guilty Plea

16 If Defendant is not a citizen of the United States, Defendant understands the
17 following:

- 18 a. pleading guilty in this case may have immigration
- 19 consequences;
- 20 b. a broad range of federal crimes may result in Defendant's
- 21 removal from the United States, including the offense to which
- 22 Defendant is pleading guilty;
- 23 c. removal from the United States and other immigration
- 24 consequences are the subject of separate proceedings; and
- 25 d. no one, including Defendant's attorney or the Court, can predict
- 26 with absolute certainty the effect of a federal conviction on
- 27 Defendant's immigration status.

1 Defendant affirms that Defendant is knowingly, intelligently, and voluntarily
2 pleading guilty as set forth in this Plea Agreement, regardless of any immigration
3 consequences that Defendant's guilty plea may entail.

4 5. Waiver of Constitutional Rights

5 Defendant understands that by entering this guilty plea, Defendant is
6 knowingly and voluntarily waiving certain constitutional rights, including the
7 following:

8 a. the right to a jury trial;
9 b. the right to see, hear and question the witnesses;
10 c. the right to remain silent at trial;
11 d. the right to testify at trial; and
12 e. the right to compel witnesses to testify.

13 While Defendant is waiving certain constitutional rights, Defendant
14 understands that Defendant retains the right to be assisted by an attorney through
15 the sentencing proceedings in this case and any direct appeal of Defendant's
16 conviction and sentence, and that an attorney will be appointed at no cost if
17 Defendant cannot afford to hire an attorney.

18 Defendant understands and agrees that any defense motions currently
19 pending before the Court are mooted by this Plea Agreement, and Defendant
20 expressly waives Defendant's right to bring any additional pretrial motions.

21 6. Elements of the Offense

22 The United States and Defendant agree that in order to convict Defendant of
23 Brandishing of a Firearm During and in Relation to a Crime of Violence, in
24 violation of 18 U.S.C. § 924(c)(1)(A)(ii), the United States would have to prove
25 the following beyond a reasonable doubt.

26 a. *First*, the defendant committed the crime of Assault with a
27 Dangerous Weapon, as charged in Count 1 of the indictment,
28 which is a crime of violence;

- b. *Second*, the defendant knowingly possessed a firearm; and
- c. *Third*, the defendant possessed the firearm in furtherance of the crime of Assault with a Dangerous Weapon.

9th Cir. Model Jury Instr. 14.23 (Sept 2022)(modified).

7. Factual Basis and Statement of Facts

The United States and Defendant stipulate and agree to the following: the facts set forth below are accurate; the United States could prove these facts beyond a reasonable doubt at trial; and these facts constitute an adequate factual basis for Defendant's guilty plea.

The United States and Defendant agree that this statement of facts does not preclude either party from presenting and arguing, for sentencing purposes, additional facts that are relevant to the Sentencing Guidelines computation or sentencing, unless otherwise prohibited in this Plea Agreement.

On February 26, 2022, a male identified as I.C.V., parked his vehicle in a dirt parking lot near 16th Avenue and Gilbert Road, in Yakima, Washington. I.C.V. was on the phone with his uncle. The Defendant observed the vehicle, drove his truck to the dirt parking lot, and parked behind the vehicle. The Defendant exited his truck and walked towards the vehicle. I.C.V. observed the Defendant walk towards his vehicle. I.C.V. exited his vehicle. I.C.V. and the Defendant had a brief conversation. The Defendant walked back to his truck and grabbed a rifle. The Defendant pointed the rifle at I.C.V. and ordered him to get on the ground. The Defendant lowered the rifle and I.C.V. attempted to run away. The Defendant chased I.C.V. and hit him in the back with the rifle. After being struck, I.C.V. became disoriented and fell to the ground. The Defendant drove away and then returned a short time later. A person exited the Defendant's truck and stole I.C.V.'s vehicle. I.C.V. later called 911. Police and an ambulance crew arrived. I.C.V. was transported to the hospital.

1 I.C.V.'s vehicle was later found by law enforcement. The vehicle had been
2 damaged and I.C.V.'s personal belongings had been stolen.

3 The Defendant is an Indian as that term is used in 18 U.S.C. § 1153. The
4 above incident occurred within the external boundaries of the Yakama Nation
5 Indian Reservation, in Indian Country.

6 **8. The United States' Agreements**

7 The United States Attorney's Office for the Eastern District of Washington
8 agrees that at the time of sentencing, the United States will move to dismiss Count
9 1 of the Indictment filed on July 12, 2022, which charges Defendant with Assault
10 with a Dangerous Weapon, in violation of 18 U.S.C. § 1153 and 113(a)(3).

11 The United States Attorney's Office for the Eastern District of Washington
12 agrees not to bring additional charges against Defendant based on information in
13 its possession at the time of this Plea Agreement that arise from conduct that is
14 either charged in the Indictment or identified in discovery produced in this case,
15 unless Defendant breaches this Plea Agreement before sentencing.

16 **9. United States Sentencing Guidelines Calculations**

17 Defendant understands and acknowledges that the United States Sentencing
18 Guidelines ("U.S.S.G." or "Guidelines") apply and that the Court will determine
19 Defendant's advisory range at the time of sentencing, pursuant to the Guidelines.
20 The United States and Defendant agree to the following Guidelines calculations.

21 **a. Base Offense Level**

22 The United States and the Defendant agree that the guideline sentence is the
23 minimum term of imprisonment required by statute. U.S.S.G. § 2K2.4(b). Here,
24 the minimum term of imprisonment required by statute is 7 years. 18 U.S.C.
25 § 924(c)(1)(A)(ii).

26 **b. Acceptance of Responsibility**

27 The United States and the Defendant agree that the provisions for acceptance
28 of responsibility are not applicable.

1 c. No Other Agreements

2 The United States and Defendant have no other agreements regarding the
3 Guidelines or the application of any Guidelines enhancements, departures, or
4 variances. Defendant understands and acknowledges that the United States is free
5 to make any sentencing arguments it sees fit, including arguments arising from
6 Defendant's uncharged conduct, conduct set forth in charges that will be dismissed
7 pursuant to this Agreement, and Defendant's relevant conduct.

8 d. Criminal History

9 The United States and Defendant have no agreement and make no
10 representations about Defendant's criminal history category, which will be
11 determined by the Court after the United States Probation Office prepares and
12 discloses a Presentence Investigative Report.

13 10. Incarceration

14 The United States and the Defendant agree to recommend that the Court
15 impose a term of incarceration within a range of 96 months (8 years) to 120
16 months (10 years).

17 11. Supervised Release

18 The United States and Defendant each agree to recommend five (5) years of
19 supervised release. Defendant agrees that the Court's decision regarding the
20 conditions of Defendant's Supervised Release is final and non-appealable; that is,
21 even if Defendant is unhappy with the conditions of Supervised Release ordered by
22 the Court, that will not be a basis for Defendant to withdraw Defendant's guilty
23 plea, withdraw from this Plea Agreement, or appeal Defendant's conviction,
24 sentence, or any term of Supervised Release.

25 The United States and Defendant agree to recommend that in addition to the
26 standard conditions of supervised release imposed in all cases in this District, the
27 Court should also impose the following conditions:

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- 1 a. The United States Probation Officer may conduct, upon
2 reasonable suspicion, and with or without notice, a search of
3 Defendant's person, residences, offices, vehicles, belongings,
4 and areas under Defendant's exclusive or joint control.
- 5 b. Defendant shall participate and complete such drug testing and
6 drug treatment programs as the Probation Officer directs.
- 7 c. Defendant shall complete mental health evaluations and
8 treatment, including taking medications prescribed by the
9 treatment provider. Defendant shall allow reciprocal release of
10 information between the Probation Officer and the treatment
11 provider. Defendant shall contribute to the cost of treatment
12 according to the Defendant's ability.

13 12. Criminal Fine

14 The United States and Defendant may make any recommendation
15 concerning the imposition of a criminal fine. Defendant acknowledges that the
16 Court's decision regarding a fine is final and non-appealable; that is, even if
17 Defendant is unhappy with a fine ordered by the Court, that will not be a basis for
18 Defendant to withdraw Defendant's guilty plea, withdraw from this Plea
19 Agreement, or appeal Defendant's conviction, sentence, or fine.

20 13. Mandatory Special Penalty Assessment

21 Defendant agrees to pay the \$100 mandatory special penalty assessment to
22 the Clerk of Court for the Eastern District of Washington, pursuant to 18 U.S.C.
23 § 3013.

24 14. Restitution

25 The United States and Defendant agree that restitution is appropriate and
26 mandatory, without regard to Defendant's economic situation, to identifiable
27 victims who have suffered physical injury or pecuniary loss, pursuant to 18 U.S.C.
28 §§ 3663A, 3664.

1 Pursuant to 18 U.S.C. § 3663(a)(3), Defendant voluntarily agrees to pay
 2 restitution for all losses caused by Defendant's individual conduct, in exchange for
 3 the United States not bringing additional potential charges, regardless of whether
 4 counts associated with such losses will be dismissed as part of this Plea
 5 Agreement. With respect to restitution, the United States and Defendant agree to
 6 the following:

7 a. Restitution Amount and Interest

8 The United States and Defendant stipulate and agree that, pursuant to 18
 9 U.S.C. §§ 3663, 3663A and 3664, the Court should order restitution in an amount
 10 not to exceed \$6,000.00, and that any interest on this restitution amount, if any,
 11 should be waived. *Defendant reserves the right to object
to amount of restitution.*

12 b. Payments

13 To the extent restitution is ordered, the United States and Defendant agree
 14 that the Court will set a restitution payment schedule based on Defendant's
 15 financial circumstances. 18 U.S.C. § 3664(f)(2), (3)(A). Regardless, Defendant
 16 agrees to pay not less than 10% of Defendant's net monthly income towards
 17 restitution.

18 c. Treasury Offset Program and Collection

19 Defendant understands the Treasury Offset Program ("TOP") collects
 20 delinquent debts owed to federal agencies. If applicable, the TOP may take part or
 21 all of Defendant's federal tax refund, federal retirement benefits, or other federal
 22 benefits and apply these monies to Defendant's restitution obligations. 26 U.S.C.
 23 § 6402(d); 31 U.S.C. § 3720A; 31 U.S.C. § 3716.

24 Defendant understands that the United States may, notwithstanding the
 25 Court-imposed payment schedule, pursue other avenues to ensure the restitution
 26 obligation is satisfied, including, but not limited to, garnishment of available funds,
 27 wages, or assets. 18 U.S.C. §§ 3572, 3613, and 3664(m).

28 Nothing in this acknowledgment shall be construed to limit Defendant's

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1 ability to assert any specifically identified exemptions as provided by law, except
2 as set forth in this Plea Agreement.

3 Until Defendant's fine and restitution obligations are paid in full, Defendant
4 agrees fully to disclose all assets in which Defendant has any interest or over
5 which Defendant exercises control, directly or indirectly, including those held by a
6 spouse, nominee or third party.

7 Until Defendant's fine and restitution obligations are paid in full, Defendant
8 agrees to provide waivers, consents, or releases requested by the U.S. Attorney's
9 Office to access records to verify the financial information.

10 d. Notifications and Waivers

11 Defendant agrees to notify the Court and the United States of any material
12 change in Defendant's economic circumstances (e.g., inheritances, monetary gifts,
13 changed employment, or income increases) that might affect Defendant's ability to
14 pay restitution. 18 U.S.C. § 3664(k). Defendant also agrees to notify the United
15 States of any address change within 30 days of that change. 18 U.S.C.
16 § 3612(b)(1)(F). These obligations cease when Defendant's fine and restitution
17 obligations are paid in full.

18 Defendant acknowledges that the Court's decision regarding restitution is
19 final and non-appealable; that is, even if Defendant is unhappy with the amount of
20 restitution ordered by the Court, that will not be a basis for Defendant to withdraw
21 Defendant's guilty plea, withdraw from this Plea Agreement, or appeal
22 Defendant's conviction, sentence, or restitution order.

23 15. Payments While Incarcerated

24 If Defendant lacks the financial resources to pay the monetary obligations
25 imposed by the Court, Defendant agrees to earn money toward these obligations by
26 participating in the Bureau of Prisons' Inmate Financial Responsibility Program.

27 16. Additional Violations of Law Can Void Plea Agreement

1 The United States and Defendant agree that the United States may, at its
2 option and upon written notice to the Defendant, withdraw from this Plea
3 Agreement or modify its sentencing recommendation if, prior to the imposition of
4 sentence, Defendant is charged with or convicted of any criminal offense or tests
5 positive for any controlled substance.

6 17. Waiver of Appeal Rights

7 Defendant understands that Defendant has a limited right to appeal or
8 challenge Defendant's conviction and the sentence imposed by the Court.

9 Defendant expressly waives all of Defendant's rights to appeal Defendant's
10 conviction. The Defendant expressly waives all of Defendant's rights to appeal
11 Defendant's sentence so long as the term of imprisonment imposed is no more than
12 120 months (10 years).

13 Defendant expressly waives Defendant's right to appeal any fine, term of
14 supervised release, or restitution order imposed by the Court, so long as the amount
15 of restitution is not more than \$6,000.00.

16 Defendant expressly waives the right to file any post-conviction motion
17 attacking Defendant's conviction and sentence, including a motion pursuant to 28
18 U.S.C. § 2255, except one based on ineffective assistance of counsel arising from
19 information not now known by Defendant and which, in the exercise of due
20 diligence, Defendant could not know by the time the Court imposes sentence.

21 Nothing in this Plea Agreement shall preclude the United States from
22 opposing any post-conviction motion for a reduction of sentence or other attack
23 upon the conviction or sentence, including, but not limited to, writ of habeas
24 corpus proceedings brought pursuant to 28 U.S.C. § 2255.

25 18. Compassionate Release

26 In consideration for the benefits Defendant is receiving under the terms of
27 this Plea Agreement, Defendant expressly waives Defendant's right to bring any
28 motion for Compassionate Release other than a motion arising from one of the

1 specific bases set forth in this paragraph of this Plea Agreement. The United States
2 retains the right to oppose, on any basis, any motion Defendant files for
3 Compassionate Release.

4 The only bases on which Defendant may file a motion for Compassionate
5 Release in the Eastern District of Washington are the following:

6 a. Medical Condition of Defendant

7 i. Defendant is suffering from a terminal illness (i.e., a
8 serious and advanced illness with an end of life
9 trajectory). A specific prognosis of life expectancy (i.e.,
10 a probability of death within a specific time period) is not
11 required. Examples include metastatic solid-tumor
12 cancer, amyotrophic lateral sclerosis (ALS), end-stage
13 organ disease, and advanced dementia; or
14 ii. Defendant is suffering from a serious physical or medical
15 condition, a serious functional or cognitive impairment,
16 or deteriorating physical or mental health because of the
17 aging process that substantially diminishes the ability of
18 the defendant to provide self-care within the environment
19 of a correctional facility and from which Defendant is not
20 expected to recover.

21 b. Age of Defendant

22 i. Defendant is at least 65 years old, is experiencing a
23 serious deterioration in physical or mental health because
24 of the aging process; and has served at least 10 years or
25 75 percent of Defendant's term of imprisonment,
26 whichever is less; or
27 ii. Defendant is at least 70 years old and has served at least
28 30 years in prison pursuant to a sentence imposed under

18 U.S.C. § 3559(c) for the offense or offenses for which
Defendant is imprisoned.

c. Family Circumstances

- i. The caregiver of Defendant's minor child or children has died or become incapacitated, and Defendant is the only available caregiver for Defendant's minor child or children; or
- ii. Defendant's spouse or registered partner has become incapacitated, and Defendant is the only available caregiver for Defendant's spouse or registered partner.

d. Subsequent Reduction to Mandatory Sentence

- i. Defendant pleaded guilty to an offense which, on the date of Defendant's guilty plea, carried a mandatory minimum sentence; and
- ii. after the entry of judgment, the length of the mandatory minimum sentence for Defendant's offense of conviction was reduced by a change in the law; and
- iii. the application of the reduced mandatory minimum sentence would result in Defendant receiving a lower overall sentence.

e. Ineffective Assistance of Counsel

- i. Defendant seeks Compassionate Release based on a claim of ineffective assistance of counsel arising from information that Defendant both
 1. did not know at the time of Defendant's guilty plea, and
 2. could not have known, in the exercise of due diligence, at the time the Court imposed sentence.

1 19. Withdrawal or Vacatur of Defendant's Plea

2 Should Defendant successfully move to withdraw from this Plea Agreement
3 or should Defendant's conviction be set aside, vacated, reversed, or dismissed
4 under any circumstance, then:

- 5 a. this Plea Agreement shall become null and void;
- 6 b. the United States may prosecute Defendant on all available
7 charges;
- 8 c. The United States may reinstate any counts that have been
9 dismissed, have been superseded by the filing of another
10 charging instrument, or were not charged because of this Plea
11 Agreement; and
- 12 d. the United States may file any new charges that would
13 otherwise be barred by this Plea Agreement.

14 The decision to pursue any or all of these options is solely in the discretion
15 of the United States Attorney's Office.

16 Defendant agrees to waive any objections, motions, and/or defenses
17 Defendant might have to the United States' decisions to seek, reinstate, or reinitiate
18 charges if a count of conviction is withdrawn, set aside, vacated, reversed, or
19 dismissed, including any claim that the United States has violated Double
20 Jeopardy.

21 Defendant agrees not to raise any objections based on the passage of time,
22 including but not limited to, alleged violations of any statutes of limitation or any
23 objections based on the Speedy Trial Act or the Speedy Trial Clause of the Sixth
24 Amendment.

25 20. Integration Clause

26 The United States and Defendant acknowledge that this document
27 constitutes the entire Plea Agreement between the United States and Defendant,

1 and no other promises, agreements, or conditions exist between the United States
2 and Defendant concerning the resolution of the case.

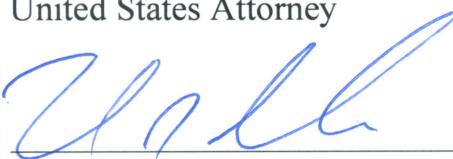
3 This Plea Agreement is binding only on the United States Attorney's Office
4 for the Eastern District of Washington, and cannot bind other federal, state, or local
5 authorities.

6 The United States and Defendant agree that this Agreement cannot be
7 modified except in a writing that is signed by the United States and Defendant.

8 Approvals and Signatures

9 Agreed and submitted on behalf of the United States Attorney's Office for
10 the Eastern District of Washington.

11 Vanessa R. Waldref
12 United States Attorney



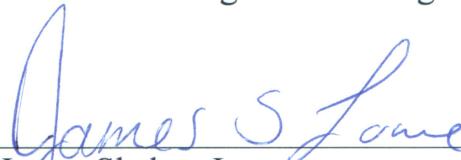
13 Thomas J. Hanlon
14 Assistant United States Attorney



15 Date

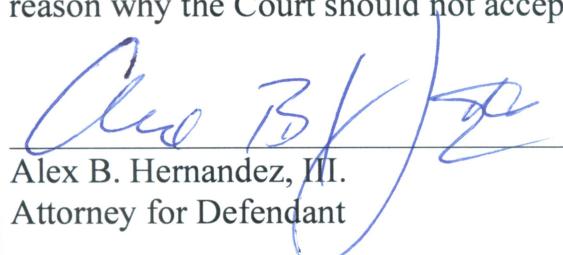
16
17 I have read this Plea Agreement and I have carefully reviewed and discussed
18 every part of this Plea Agreement with my attorney. I understand the terms of this
19 Plea Agreement. I enter into this Plea Agreement knowingly, intelligently, and
20 voluntarily. I have consulted with my attorney about my rights, I understand those
21 rights, and I am satisfied with the representation of my attorney in this case. No
22 other promises or inducements have been made to me, other than those contained
23 in this Plea Agreement. No one has threatened or forced me in any way to enter
24 into this Plea Agreement. I agree to plead guilty because I am guilty.

25
26 James Skahan-Lowe
27 Defendant



28 Date

1 I have read the Plea Agreement and have discussed the contents of the
2 agreement with my client. The Plea Agreement accurately and completely sets
3 forth the entirety of the agreement between the parties. I concur in my client's
4 decision to plead guilty as set forth in the Plea Agreement. There is no legal
5 reason why the Court should not accept Defendant's guilty plea.

6 
7 Alex B. Hernandez, III.
8 Attorney for Defendant

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